

### **ELECTION OF SPECIES OF GROUP I**

In response to the species restriction requirement, Applicants hereby elect Group I, i.e., the species of patch bag recited in Claim 19. Claim 19 recites the seal as being through the bag, and not through the patch.

### **REMARKS**

Applicants acknowledge the issuance of the restriction requirement between the alleged “species” of patch bags of Groups, I, II, III, and IV. More particularly, Applicants acknowledge that the species of Group I is distinct from the species of Group II. Applicants also note that the Office Action states: “Currently, none of the claims are generic.”

However, the patch bag of Group IV does not appear to be distinct from the species of Group III, as both Group III and Group IV have at least Claim 21 in common with one another. In other words, a patch bag having a patch overhanging both side edges (i.e., Claims 21 and 22) is not distinct from a patch bag having a patch on each lay-flat side of the bag, with both patches overhanging both side edges of the bag, with overhanging portions of each of the patches being adhered to one another (i.e., Claim 23). That is, Claims 21 and 23 are related as subcombination and combination, respectively. Restriction between a subcombination claim and a combination claim is proper only when two-way distinctness is satisfied. See MPEP 806.05. Two-way distinctness is met only if the combination claim *does not require* the particulars of the subcombination. Clearly, in the instant application, combination Claim 23 *does require* the particulars of subcombination Claim 21. That is, all features recited in Claim 21 are present in Claim 23. Indeed, this is immediately apparent because Claim 23 depends directly from Claim

21. Thus, the species restriction between Group III and Group IV is improper, as they are not distinct species. Rather, Claim 23, in that it depends from and further limits Claim 21, is by definition a species of Claim 21. That is, Claim 21 is generic with respect to Claim 23. Likewise, Claim 12 (from which Claim 21 depends) is by definition generic with respect to Claim 21.

Although Applicants' election of Group I would initially appear to render moot the above remarks pertaining to Groups III and IV, such is not the case because under 37 CFR 1.141, if a generic claim is ultimately allowed, then a reasonable number of claims directed to species may also be claimed in the same application, provided the claims to the species are dependent claims, and provided the number of species claims does not exceed a reasonable number. See 37 CFR 1.141 and MPEP 809.02. Of course, if the generic claim is allowed, so too should the dependent claims be allowed.

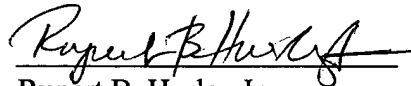
Furthermore, Applicants do not acquiesce to the statement in the Office Action that "there are currently no generic claims." More particularly, Applicants direct attention to Claim 12, the only independent claim under examination. Claim 12 is generic with respect to all of the claims which depend therefrom. These dependent claims include Claims 13, 14, 15, 16, 17, 19, 20, 21 and 22. Thus, if generic Claim 12 is allowed, then claims directed to a reasonable number of species should also be examined (and allowed), in accordance with 37 CFR 1.141 and MPEP 809.02. Applicants contend that Claims 14, 15, 16, 17, 19, 20, 21, and 22, the only remaining claims under examination, are directed to a "reasonable number" of species.

Conclusion

Applicants respectfully request entry of the election above as well as consideration of the remarks set forth above, with a view towards withdrawing the species restriction requirement.

Applicants also request that each of Claims 13-17 and 19-22 be considered with a view towards allowance, for all of the reasons set forth in the Amendment filed 14 January 2005.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rupert B. Hurley Jr.", written over a horizontal line.

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23 March 2005